89-1114

Supreme Court, U.S.
FILED
JAN 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

BETTY DONALDSON, DERYL W. DONALDSON and CHARLES H. ELLER, as Executor of the Estate of FAYE RAYE ELLER, deceased

Petitioners,

No. 84-L-73 and 85-L-169

vs.

HOPKINS TOWNSHIP, ILLINOIS, a municipal corporation, and WHITESIDE COUNTY, ILLINOIS, a municipal corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Randall K. Reese
William E. Gottfred,
REESE & REESE
979 North Main Street
Rockford, Illinois 61103
815/968-8851

QUESTIONS PRESENTED

Have the petitioners been wrongfully deprived of a vested constitutional property right?

TABLE OF CONTENTS

	Page
Questions Presented	i
Index to Appendix	iii
Table of Authorities	iv
Opinion Below	1
Jurisdictional Statement	2
Statutes Involved	3
Statement of the Case	4
Argument For Granting the Writ . . .	6
Conclusion	9

INDEX TO APPENDIX

App. Page

Appendix A. Opinion of Appellate Court of Illinois Third District 1

Appendix B. Order denying Petition for Rehearing 11

Appendix C. Orders and Opinion of the trial court of the Fourteenth Judicial Circuit, County of Whiteside, State of Illinois . . . 13

Appendix D. Order of the Supreme Court of Illinois in denying the Petition for Leave to Appeal . . . 28

TABLE OF AUTHORITIES

Cases — Page

Illinois Revised Statutes ch. 85, ¶3-104, (1965) 6

Illinois Revised Statutes ch. 85, ¶3-104, (1987) 6

Janssen v. City of Springfield, 79 Ill.2d 435, 404 N.E.2d 213 (1980) 7

Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. ___, 99 L.Ed.2d 565, 108 S.Ct. 1340 (1988) 8

Hogan v. Bleeker, 29 Ill.2d 181, 193 N.E.2d 844 (1963) 8

Mulligan v. Joliet Regional Court District, 123 Ill.2d 303, 527 N.E.2d 1264 (1988) . . 8

Zielnik v. Loyal Order of Moose, Lodge No. 265, 174 Ill.App.3d 409, 528 N.E.2d 384 (1988) . . . 9

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

BETTY DONALDSON, DERYL W. DONALDSON and CHARLES M. ELLER, as Executor of the Estate of FAYE RAYE ELLER, deceased,

Petitioners,

No. 84-L-73 and 85-L-169

vs.

HOPKINS TOWNSHIP, ILLINOIS, a municipal corporation, and WHITESIDE COUNTY, ILLINOIS, a municipal corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

OPINION BELOW

The Opinion of the Appellate Court of Illinois, Third District, is contained herein as Appendix A, and the citation thereof is No. 3-88-0039 (1989).

JURISDICTIONAL STATEMENT

The Appellate Court of Illinois, Third District rendered its judgment on January 13, 1989. A timely petition for rehearing was denied on April 21, 1989.

A Petition for Leave to Appeal to the Illinois Supreme Court was timely filed and was denied on October 5, 1989, and this Petition for Writ of Certiorari is timely filed within ninety (90) days thereafter.

The decision of the Appellate Court is called into question on the ground that it deprived petitioners of a vested property right, in violation of the 14th Amendment to the United States Constitution.

This petition is filed under the provisions of 28 U.S.C. Section 1257(b) and appropriate rules of this Court.

STATUTES INVOLVED

Ill Rev. Stat. ch. 85, ¶3-104(b) (1965), states:

Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to provide traffic warning signals, signs, markings or other devices unless such a signal, sign, marking or device was necessary to warn of a condition which endangered the safe movement of traffic, and which would not be reasonably apparent to or anticipated by a person in the exercise of due care.

Ill. Rev. Stat. ch. 85, ¶3-104 (1987), states:

Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to initially provide regulatory traffic control devices, stop signs, yield right-of-way signs, speed restriction signs, distinctive road markings or any other traffic regulating or warning sign, device or marking, signs, overhead lights, traffic separating or restraining devices or barriers.

STATEMENT OF THE CASE

On April 24, 1983, petitioners, BETTY A. DONALDSON and FAYE RAYE ELLER, deceased, were involved in an automobile accident. The vehicle in which they were passengers was proceeding in a northerly direction on Habben Road in Whiteside County. At that time another vehicle was traveling in an easterly direction on Hazel Road in Whiteside County. Habben Road and Hazel Road intersect. Habben Road is maintained by Whiteside County. Hazel Road is maintained by Hopkins Township. The intersection of the two roads was maintained by Whiteside County. An accident occurred involving those two vehicles at that intersection.

Just prior to the intersection, Habben Road has a vertical curve so that the intersection is in a depression. The intersection is not readily visible until

in close proximity with it, depriving a driver on Habben Road with any warning of the intersection and of the ability to stop at the intersection if necessary.

At the time of the accident, there existed a statute in the State of Illinois stating a duty of a municipality to warn of a condition which endangered the safe movement of traffic. Rather than applying that statute, in rendering its decision, the Appellate Court of Illinois premised its decision on a 1987 amendment of that statute which substantially lessened the duty of a municipality.

ARGUMENT FOR GRANTING THE WRIT

All of the proceedings, pleadings, argument, and decisions at the trial court level, pertaining to Illinois Revised Statutes ch. 85, ¶3-104, were premised upon the 1965 version of that statute. That statute provided in substance that there was a duty on the part of a municipality to warn drivers of a condition on a highway where the condition endangered the safe movement of traffic and which would not be reasonably apparent to or anticipated by a person in the exercise of due care. The 1987 amendment to that statute, upon which the Appellate Court relied for its decision, substantially revised the 1965 statute. The 1987 statute states in substance that a municipality is not liable for any injury caused by the failure to initially provide warning of a condition on a highway. The statutes are

opposite regarding duty. The 1965 statute places a duty on the municipality to initially post warning signs of an unsafe condition, whereas the 1987 statute states affirmatively that there is no such duty. The Appellate Court, however, relied fully upon the 1987 statute in holding that Whiteside County owed no duty to petitioners, although the accident occurred on April 24, 1983.

There is no question that the statute codified the common law duty to warn. The Illinois Supreme Court in Janssen v. City of Springfield, 79 Ill.2d 435, 404 N.E.2d 213 (1980), specifically held that the common law duty to warn motorists of a dangerous condition was codified in ¶3-104(b).

Petitioners contend that the Appellate Court's reliance on and implementation of the 1987 statute in its decision deprives

them of a vested constitutional property right in their cause of action. This Court has previously held that a cause of action constitutes a property right protected by the 14th Amendment to the Constitution of the United States. Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. ___, 99 L.ED.2d 565, 108 S.Ct. 1340 (1988). The Illinois Supreme Court in Hogan v. Bleeker, 29 Ill.2d 181, 193 N.E.2d 844 (1963), held that statutes are not to be construed retroactively where to do so would deprive one of a vested property right. In Illinois a statute cannot be applied retroactively without express provisions stating that the act is to have retroactive effect. Mulligan v. Joliet Regional Court District, 123 Ill.2d 303, 527 N.E.2d 1264 (1988). Here, the statute had no such provision for retroactive applica-

tion. The date for determining which statute is applicable is when the cause of action accrued. Zielnik v. Loyal Order of Moose, Lodge No. 265, 174 Ill.App.3d 409, 528 N.E.2d 384 (1988). Thus, there is no question that the Appellate Court should have applied the 1965 statute rather than the 1987 amendment of that statute. In basing its decision upon the 1987 statute, the Appellate Court has deprived petitioners of their vested constitutional property right in their cause of action, in violation of the 14th Amendment to the Constitution of the United States.

CONCLUSION

The petitioners' vested constitutional right in their cause of action has been taken from them. The Appellate Court of Illinois based their decision upon the wrong statute. The 1987 amendment to the

statute drastically altered the duty of a municipality. The 1965 statute, in effect at the time of accident, had codified the common law duty to warn, and that statute should have been applied to this case. As such, petitioners request that this Court grant their writ of certiorari.

Respectfully submitted,

Randall K. Reese
William E. Gottfred,
REESE & REESE
979 North Main Street
Rockford, Illinois 61103
815/968-8851

Attorneys for Petitioners, Betty Donaldson, Deryl W. Donaldson and Charles M. Eller, as Executor of the Estate of Faye Raye Eller, deceased,

APPENDIX

APPENDIX A

No. 3-88-0039

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D. 1988

BETTY A. DONALDSON and DERYL W. DONALDSON, Plaintiffs-Appellants, v. HOPKINS TOWNSHIP, ILLINOIS, a municipal corporation, and WHITESIDE COUNTY ILLINOIS, a municipal corporation, Defendants-Appellees,	Appeal from the Court of Whiteside Count Nos. 84 L 73 85 L 169 Honorable Robert W. Castendyck Judge Presiding
CHARLES M. ELLER, as Executor of the Estate of FAYE RAYE ELLER, deceased, Plaintiff-Appellant, v. HOPKINS TOWNSHIP, ILLINOIS, a municipal corporation, and WHITESIDE COUNTY, ILLINOIS, a municipal corporation, Defendants-Appellees.	

ORDER

Plaintiff, Betty Donaldson, was a passenger in an auto proceeding northerly on Habben Road, in Whiteside County, IL. William Rector was driving an auto easterly on Hazel Road in Hopkins Township, Whiteside County, IL. Rector's auto collided with Donaldson's auto in the intersection of Habben Road and Hazel Road. Mrs. Donaldson sustained injuries in the accident which rendered her a quadriplegic.

The intersection of the two roads was maintained by Whiteside County. Stop signs on Hazel Road for eastbound and westbound traffic were under the control of Whiteside County.

Mrs. Donaldson brought suit against Hopkins Township and Whiteside County.

She alleged that Habben Road should have contained a sign indicating an approaching intersection. She also asserted that Hazel Road was in poor condition. Both defendants obtained summary judgment and this appeal ensued.

The plaintiff primarily asserts upon appeal that Whiteside County owed her a duty to warn of the approaching dangerous intersection. She also alleges that Hopkins Township failed to maintain Hazel Road in a safe condition.

A motion for summary judgment should only be granted if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. (Ill. Rev. Stat. 1987, ch. 110, par. 2-1005.) If all of the evidence presented to the trial

court does not raise an issue of material fact, then the motion for summary judgment should be granted, if warranted as a matter of law. Kramer v. Weedhopper of Utah, Inc. (1986), 141 Ill. App. 3d 217, 490 N.E.2d 104.

In a cause of action alleging negligence, the plaintiff must establish the existence of a duty, a breach of that duty and an injury proximately resulting from the breach of the duty. Pelham v. Griesheimer (1982), 92 Ill. 2d 13, 440 N.E.2d 96.

The plaintiff contends that defendant Whiteside County had a duty to post a crossroad warning sign on Habben Road to warn of the dangerous intersection which it maintained, pursuant to the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1987, ch. 85, par. 3-104), and the Illinois

Vehicle Code (Ill. Rev. Stat. 1987, ch. 95½, par. 11-304).

We find that neither statute imposes a duty upon Whiteside County to post a crossroad warning sign. Furthermore, we believe that a similar common law duty does not exist.

The cited provision of the Vehicle Code does not mandate that a warning sign be placed prior to the intersection. The statute empowers local authorities to maintain such traffic control devices upon highways under their maintenance jurisdiction as are required to indicate and carry out the provisions of the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways. (Ill. Dept. of Transportation (1979).) As a matter of law, the statute does not impose an obligation upon Whiteside County to post a

crossroad warning sign. The Manual's language is not imperative nor mandatory.

Similarly, the Local Governmental and Governmental Employee's Tort Immunity Act is an act relative to the tort immunity of local public entities and their employees. The statute confers immunities; and its extension as a basis for liability is not warranted by the facts at bar.

The plaintiff places principal reliance upon the Illinois Supreme Court decisions in Bentley v. Saunemin Township (1980), 83 Ill. 2d 10, 413 N.E.2d 1242, and Janssen v. City of Springfield (1980), 70 Ill. 2d 435, 404 N.E.2d 213. These cases, when carefully considered, present distinguishable factual circumstances then those at bar. In Bentley the court held that a township and its highway commissioner have a duty of reasonable care in maintaining the visibility of a stop

sign placed by the State at an intersection of township and State roads. In Janssen, the city was found to have a statutory obligation to post warning of the hazard created by a traffic island which projected 5½ feet into the outer lane of an intersection of a State highway that was under State control. While Janssen is illustrative of the scope of the duty imposed upon cities and municipalities, its rule does not encompass the factual avernments of the case at bar and the evidence in the trial record. The imposition of a sign posting obligation need be clearly mandated. The subject intersection cannot be said to require a warning sign under the statutes of this state.

Furthermore, the traditional common law duty of local governments concerning public property is a duty to maintain that property in a reasonably safe condition.

(Curtis v. County of Cook (1983), 98 Ill. 2d 158, 456 N.E.2d 116.) The duty is only to maintain the property and does not require the creation of public improvements. (American State Bank v. Cude (1975), 30 Ill. App. 3d 206, 331 N.E.2d 825.) Thus, under the facts alleged here, Whiteside County owed no common law duty to Mrs. Donaldson to erect a crossroad warning sign.

The defendant also appeals the summary judgment entered in favor of Hopkins Township. The plaintiff asserts that the defendant failed to repair and maintain Hazel Road. She further asserts that the stop sign on Hazel Road was placed too close to the ground and too close to the road.

We find the plaintiff's propositions void of support in the record. Liability cannot be predicated upon conjecture, but

must be certainly established. A prima facie case has not been alleged. The plaintiff has also failed to establisn a causal relationship between the alleged negligence and the injury she sustained.

The plaintiff has principally relied upon her contention that the trial court's exclusion of Mr. Rector's testimony at the time of his deposition, to the effect it was his habit, when driving, to swerve to avoid potholes, was in error. She asserts that Mr. Rector swerved to avoid potholes on Hazel Road and thus had his focus on the road surface and not on the signs posted at the roadside.

In Illinois, evidence of habit is not admitted on the basis of its probative value; it it admitted when it is necessitated due to an absence of eyewitnesses. The rule's application extends to cases where the eyewitnesses were silenced by

death, amnesia, mental incompetency or a statutory bar. In the instant case, Mr. Rector is able to relate enough of the circumstances of the accident tnat his own habit testimony would be inadmissible.

For all of the foregoing reasons the judgment of the circuit court of Whiteside County in favor of the defendants, Hopkins Township and Whiteside County is affirmed.

Affirmed.

WOMBACHER, J. , with STROUDER, P.J; HEIPLE, J., concurring.

APPENDIX B

STATE OF ILLINOIS

THIRD DISTRICT APPELLATE COURT

Roger Johnson,
Clerk
815 434-5050

1004 Columbus Street
Ottawa, Illinois
61350

Be it Remembered, That, to wit: On the 21st day of April, 1989, certain proceedings were had and orders made and entered of record by said Court, among which is the following, viz:

3-88-0039

Betty A. Donaldson and Deryl W. Donaldson. Plaintiffs-Appellants,	APPEAL FROM: Whiteside County
vs.	Hon. Robert W. Castendyck
Hopkins Township, Illinois and Whiteside County, Defendants-Appellees.	84 L 73 & 85 L 169 (Consolidated)

Now on this day this cause coming on for hearing upon the petition for rehearing filed by Reese & Reese, herein,

and the Court having duly considered said petition, as well as the matters and things alleged in support thereof, and being now fully advised in the premises;

It is therefore ordered by the Court that said petition for rehearing be and the same is hereby overruled and denied.

/s/ Roger Johnson
Clerk of the Appellate Court

APPENDIX C

2350/5972.AGK;pml

STATE OF ILLINOIS)
) SS
COUNTY OF WHITESIDE)

IN THE CIRCUIT COURT FOR THE 14TH
JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

CHARLES ELLER, as Executor of for the Estate of FAYE RAYE ELLER, deceased, Plaintiff, v. HOPKINS TOWNSHIP, ILLINOIS, a municipal corporation and WHITESIDE COUNTY, ILLINOIS, a municipal corporation, Defendants.	No. 85 L 169 and 85 L 73 (Consolidated)
BETTY A. DONALDSON and DERYL DONALDSON, Plaintiffs, v. HOPKINS TOWNSHIP, ILLINOIS a municipal corporation and WHITESIDE COUNTY, ILLINOIS, a municipal corporation, Defendants.	No. 84 L 73

ORDER

THIS MATTER coming onto be heard on the Defendant, WHITESIDE COUNTY'S, Motion for Summary Judgment, due notice having been given and the matter having been fully briefed by the parties, the Court having considered the briefs of the parties and the cases cited therein and the Court having heard oral arguments of the parties through their respective counsel and the Court having filed its MEMORANDUM OPINION of December 9, 1987;

IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendant, WHITESIDE COUNTY'S, Motion for Summary Judgment is hereby granted and the cause herein pending against said Defendant is hereby dismissed with prejudice pursuant to this Court's MEMORANDUM OPINION filed December 9, 1987, which is fully incorporated herein by reference and made a part of this Order as if it was fully set forth herein;

2. The Court finds no just cause to delay the enforcement or appeal of this matter.

DATED: December 21, 1987

ENTERED: /s/Judge Robert W. Castendyck
Judge Robert W. Castendyck

CHARLES C. HOPPE, JR.
JUDGE & KNIGHT, LTD.
ATTORNEYS FOR DEFENDANT
422 N. Northwest Highway
Suite 200
Park Ridge, Illinois 60068
(312) 696-2310

IN THE CIRCUIT COURT OF THE FOURTEENTH
JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

BETTY A. DONALDSON and DERYL W. DONALDSON,	)	
Plaintiffs,	)	
vs.	)	
HOPKINS TOWNSHIP, ILLINOIS, a municipal corporation, and WHITESIDE COUNTY, ILLINOIS, a municipal corporation,	)	NO. 84-L-73
Defendants.	)	
CHARLES M. ELLER, as Executor for the Estate of Faye Raye Eller, Deceased,	)	
Plaintiff,	)	
vs.	)	
HOPKINS TOWNSHIP, ILLINOIS, a municipal corporation, and WHITESIDE COUNTY, ILLINOIS, a municipal corporation,	)	NO. 85-L-169
Defendants.	)	

JUDGMENT FOR DEFENDANT, HOPKINS TOWNSHIP, AN ILLINOIS MUNICIPAL CORPORATION

This case coming on for hearing on Motion by defendant, Hopkins Township, a

municipal corporation, as amended, for summary judgment in its favor in each of the above entitled cases; the parties being represented by their respective attorneys; and the Court having considered the Motion as amended, the Affidavit of Irwin J. Wolber, and the exhibits attached to the Motion, and having heard argument of counsel and being fully advised in the premises;

NOW, THEREFORE, the Court grants and sustains the Motion by defendant, Hopkins Township, Illinois, a municipal corporation.

WHEREFORE, IT IS ORDERED by the Court that judgment be, and it is hereby, entered against plaintiff and in favor of defendant, Hopkins Township, Illinois, a municipal corporation, in each of the above entitled cases; that the above entitled cases and each of them be, and

they are hereby, dismissed with prejudice.

Dated: December 21, 1987.

ENTER:

/s/ Robert W. Castendyck
JUDGE

IN THE CIRCUIT COURT OF THE FOURTEENTH
JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

BETTY A. DONALDSON, and DERYL W. DONALDSON,	)	
Plaintiffs,	)	
-vs-	)	
HOPKINS TOWNSHIP, ILLINOIS, a Municipal Corporation, and WHITESIDE COUNTY, ILLINOIS, a Municipal Corporation,	)	
Defendants.	)	Case No. 84 L 73
CHARLES M. ELLER, as Executor for the Estate of Faye Raye Eller, Deceased,	)	Case No. 85 L 169
Plaintiff,	)	
-vs-	)	
HOPKINS TOWNSHIP, ILLINOIS, a Municipal Corporation, and WHITESIDE COUNTY, ILLINOIS, a Municipal Corporation,	)	
Defendants.	)	

MEMORANDUM OPINION

There is no dispute as to the pertinent facts of these cases.

Betty Donaldson and Faye Rae Eller were passengers in an automobile on Habben Road approaching the intersection of Hazel Road in Whiteside County, Illinois. There were stop signs on Hazel Road for east and west traffic at the intersection and a stop sign was located west of the intersection. It was reflectorized in accordance with the provisions of the Illinois Manual on Uniform Traffic Control devices.

An accident occurred on April 24, 1983 at approximately 8:00 P.M. The weather was clear and the pavement dry. No objects or obstructions prevented either driver, who was involved in the accident, from having a clear and unobstructed view of the roadway upon which said driver was traveling.

William Rector was traveling eastbound on Hazel Road and should have stopped at

the stop sign. He failed to do so and the accident occurred.

Motions to Strike or Dismiss were previously denied by this court. At that time, the court, in effect, ruled that the amended complaint set forth sufficient facts, which, if proven, would give rise to a cause of action. Since that time, discovery has been completed and this court must now rule whether or not the facts determined do or do not give rise to a duty for the breach of which a cause of action exists.

The defendants assert that the facts as now established, as a matter of law, fail to prove the existence of duties owed by defendants, the breach of which proximately caused the injuries to the plaintiffs.

The plaintiffs, in order to recover, must show a duty or duties on the part of

the defendants, a breach of the same, that injuries were sustained and that the breach or breaches were the proximate cause of the injuries.

Plaintiffs claim the defendant, Whiteside County had a duty to post a crossroad sign on Habben Road and to reduce the speed limit on said road below the statutory maximum of 55 m.p.h.

They further assert that defendant Hopkins Township had a duty to provide an illuminated or reflectorized "Stop Ahead" sign for eastbound traffic on Hazel Road. It appears this was done.

They further claim said defendant negligently and carelessly failed to repair and maintain Hazel Road and failed to place certain warning devices when it had a duty to do so.

The Court, after carefully considering the briefs and arguments of counsel finds

there was no duty on the part of Whiteside County as claimed by plaintiffs.

The court further finds there was no duty on the part of Hopkins Township to place warning devices as claimed.

While said Township did have a duty to repair and maintain Hazel Road so as not to cause distractions which would divert a driver's attention from any warning or traffic control signs and the existence of an intersection, there is no evidence of a violation of said duty to support plaintiff's claim other than the testimony of the eastbound driver, William Rector as to his habit in driving.

Evidence of habit or general practice is not admissible as proof of behavior or conformity with that habit on a specific occasion. Peo. vs. West, 102 Ill. App. 3d 50; Goetz vs. Country Mutual Insurance

Company, 28 Ill. App. 3d 154, 328 N.E. 2d 102;

Even if such testimony were to be held admissible, neither William Rector nor John Gibbs, his passenger, had or apparently have any recollection of what happened and it could result in nothing but pure speculation.

While this court does not find a duty or breach thereof, if one were to assume their existence, plaintiff would still be required to show that such breach was the proximate cuase of the injury.

The law is clear that there may be more than one proximate cause of an injury and the negligence of a defendant will not constitute a proximate cause of a plaintiff's injuries if some intervening act supersedes the defendant's negligence, but if the defendants could reasonably foresee the intervening act, that act will

not relieve the defendant of liability. Bentley vs. Saunemen Township, 83 Ill. 2d 10, 46 Ill. Dec., 129, 413 N.E. 2d 1242.

Generally the issue of proximate cause is for the trier of fact and the test is whether the first wrongdoer should have reasonably foreseen the intervening cause as a natural and probable result of his negligence. If the act of the third party is the immediate cause of injury and is such as in the exercise of reasonable diligence would not be anticipated and the third person is not under the control of the one guilty of the original wrong, the connection is broken and the first act or omission is not the proximate cause of the injury. Merlo vs. Public Service Co. 381 Ill. 300, 45 N.E. 2d 665. (Emphasis added)

The question of what constitutes the proximate cause of the injury only becomes

a question of law when the facts are not only undisputed but are also such that there can be no difference in the judgment of reasonable men as to the inferences to be drawn from them.

In this case the facts are not in dispute. William Rector went through a stop sign when he had a duty to stop and he caused the accident. Neither the county nor the township could reasonably be expected to anticipate he would not obey the law. On the contrary, they had a right to anticipate he and others using the road would obey the law and stop. To hold otherwise would require them to make four-way stops at all intersections and this is neither reasonable nor practical. It would, in effect, make them insurers.

Even if we assume the defendants created a condition by which the injuries were made possible, the injuries which

were sustained were not a natural or probable result of their acts and their acts, if any, were not the proximate cause of the injuries.

This court therefore finds that the motions for summary judgment filed by the defendants, Hopkins Township, Illinois, and Whiteside County, Illinois, should be granted.

Dated this 9th day of December, 1987.

/s/ Robert W. Castendyck
ROBERT W. CASTENDYCK
CIRCUIT JUDGE

APPENDIX D

68717 ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

October 5, 1989

Mr. William E. Gottfred
Reese & Reese
979 N. Main St.
Rockford, IL 61103

No. 68717 - Betty A. Donaldson, et al., petitioners, v. Hopkins Township, Illinois, etc., et al., respondents. Leave to appeal, Appellate Court, Third Districtl.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 27, 1989.